

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MATTHEW MUNGER, a single man, by and
through his attorney-in-fact, MICHAEL
MUNGER;

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION;
6401 Security Boulevard
Baltimore, Maryland 21235

Defendants.

CIVIL ACTION NO.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

I. INTRODUCTION

1.1 This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the Social Security Administration (“SSA”) to fulfill Plaintiff’s request for documents relating to Plaintiff’s injury at their Longview, Washington office on May 18, 2017.

1.2 This case seeks declaratory relief that Defendants is in violation of the FOIA for failing to fulfill Plaintiff’s request for records/video/photographs, and injunctive relief that Defendant immediately and fully comply with Plaintiff’s request under the FOIA.

II. JURISDICTION AND VENUE

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF - 1

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1 4.1 The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release
2 requested records to the public unless one or more specific statutory exemptions apply.

3 4.2 An agency must respond to a party making a FOIA request within twenty working
4 days, notifying that party of at least its determination whether or not to fulfill the request, and of
5 the requester's right to appeal its determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

6 4.3 An agency must respond to a FOIA appeal within twenty working days, notifying
7 that party of its determination to either release the withheld records or uphold the denial. 5 U.S.C.
8 § 522(a)(6)(A)(ii).

9 4.4 In "unusual circumstances" an agency may delay its response to a FOIA request or
10 appeal, but must provide notice and provide "the date on which a determination is expected to be
11 dispatched." 5 U.S.C. § 552(a)(6)(B)

12 4.5 This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from
13 withholding agency records and to order the production of any agency records improperly withheld
14 from the complainant." 5 U.S.C. § 522(a)(4)(B)

15 4.6 The FOIA provides a mechanism for disciplinary action against agency officials
16 who have acted inappropriately in withholding records. Specifically, when requiring the release
17 of improperly withheld records, if the Court makes a written finding that "the circumstances
18 surround the withholding raise questions whether agency personnel acted arbitrarily or
19 capriciously", a disciplinary investigation is triggered. 5 U.S.C. § 522(a)(4)(F).

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22 **V. FACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR RELIEF**

23 5.1 On May 18, 2017, Plaintiff was visiting the Longview, Washington Social Security
24 Office with his brother, Michael Munger. Plaintiff Matthew Munger was 55 years of age (at the
25 time of his injury) and is developmentally disabled. As Plaintiff entered the office, a mat in the

1 entryway was askew, causing him to fall head first into a nearby wall. The impact of Mr. Munger's
2 head left a large indent in the drywall. Mr. Munger was transported to a local hospital and
3 ultimately diagnosed with multiple cervical fractures and left paralyzed.

4 5.2 On May 25, 2017, Mr. Munger (through legal counsel) send the Social Security
5 Office in Longview, a Preservation Demand requesting they preserve all evidence surrounding Mr.
6 Munger's injury.

7 5.3 On June 2, 2017, pursuant to the Freedom of Information Act (FOIA), Plaintiff
8 requested SSA produce the following:

- 9 1. Any documents or electronic media related in whole or in part to the slip/trip
10 and fall incident involving Matthew Munger and occurring on May 18,
11 2017.
- 12 2. Any and all electronic media capturing events and occurrences in or near
13 the entry way, foyer, customer area of the Longview Social Security Office
14 on May 18, 2017.
- 15 3. Any and all documents or electronic media regarding, related to, or
16 including policies, directions, and rules relating to upkeep, maintenance,
17 hazard prevention, and safety.
- 18 4. Any and all documents or information identifying any witness to the
19 occurrences involving Matthew Munger and occurring on May 18, 2017.

20 5.4 No response, or acknowledgement of the FOIA request was ever received by SSA
21 until September 8, 2017. On this date, Plaintiff's counsel was contacted by a SSA representative
(Michael Sarich) by email advising he intended to close the FOIA request by September 30, 2017.

22 5.5 During a subsequent telephone call between Plaintiff's counsel and Mr. Sarich on
23 September 11, 2017, Mr. Sarich indicated he would start "gathering documents" responsive to
24 Plaintiff's FOIA request.

1 5.6 Four days later on September 15, 2017, Mr. Sarich first requests a signed
2 Consent/Authorization Form signed by Plaintiff. Mr. Sarich did not specify which records
3 required this signed Consent/Authorization Form. By this date, *more than three months* since the
4 FOIA request, Plaintiff had *yet* to receive a letter from SSA regarding its determination to either
5 release or withhold records, or cite to any requirement/exemption regarding the
6 release/withholding of any documents.

7 5.7 Over the next week, Plaintiff's counsel and SSA/Sarich exchanged multiple
8 emails/letters to clarify which records were withheld/required the Consent/Authorization Form,
9 and requesting a list of documents SSA claimed were exempt due to the consent requirement claim.
10 On October 3, 2017, Plaintiff's received a letter from SSA "administratively closing" the FOIA
11 request made by Plaintiff. A second letter from SSA was received on October 5, 2017, defending
12 its decision to "administratively close" Plaintiff's FOIA request. This letter further states that
13 Plaintiff was seeking "information from Mr. Munger's Social Security records," despite the fact
14 this information was never requested.

15 5.8 On October 9, 2017, Plaintiff provided the signed Consent/Authorization to SSA
16 signed by Plaintiff's brother, Michael Munger, as Plaintiff is unable to sign.

17 5.9 On October 11, 2017, Plaintiff appealed the "administrative closing" of his FOIA
18 request. No response was received by SSA after the submission of the Appeal until almost seven
19 (7) months later when a letter from SSA was received re-affirming the decision not to release
20 "certain" records. In fact, SSA had not released *any* records in response to Plaintiff's FOIA.
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22 5.10 On August 24, 2018, Plaintiff re-submitted his original FOIA request along with
23 the signed Consent/Authorization signed by Plaintiff's brother/Attorney-in-Fact, Michael Munger.
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5.13 The statutory time limit for SSA to respond to Plaintiff's request has run out and Plaintiff has constructively exhausted the applicable administrative remedies. 5 U.S.C. § 552(a)(6)(C); see also *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1310, 356 U.S.App.D.C. 54, 55 (D.C. Cir. 2003); *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 62, 287, U.S.App.D.C. 126, 131 (D.C. Cir. 1990).

First Claim of Action: Failure to Produce Records

6.3 Plaintiff is entitled to law to access to the records requested under the FOIA, unless Defendant makes an explicit and justified statutory exemption claim.

Second Claim of Action: Failure to Respond

6.5 Plaintiff realleges and incorporates by reference all preceding paragraphs.

1 6.6 On June 2, 2017, and again on August 24, 2018, Plaintiff filed a FOIA request with
2 the SSA.

3 6.7 To date, Plaintiff has not received a response from SSA and SSA has exceeded the
4 20-working day statutory time limit for such a response. 5 U.S.C. § 552(a)(6)(A)(i).

5 6.8 Therefore, SSA has violated the FOIA's mandate to response to Plaintiff's FOIA
6 request within the statutory period.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully requests that this Court:

9 7.1 Declare that SSA has violated the Freedom of Information Act (FOIA) by failing
10 to lawfully satisfy Plaintiff's FOIA requests dated June 2, 2017, and August 24, 2018;

11 7.2 Order SSA to respond to Plaintiff's FOIA request;

12 7.3 Order SSA to immediately release all records responsive to Plaintiff's FOIA
13 request;

14 7.4 Declare that SSA has violated the Freedom of Information Act (FOIA) by failing
15 to lawfully satisfy Plaintiff's FOIA requests of June 2, 2017, and August 24, 2018;

16 7.5 Award Plaintiff its reasonable attorney's fees and litigation costs in this action,
17 pursuant to 5 U.S.C. § 552(a)(4)(E); and

18 7.6 Grant such other and further relief as the Court may deem just and proper.

19 DATED this 15th day of July, 2018.

20 RUSSELL & HILL, PLLC

21 /s/ Brandon K. Batchelor
22 BRANDON K. BATCHELOR, WSBA 42477

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24 AND INJUNCTIVE RELIEF - 7

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